

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-40114-FDS

TIMOTHY L. LaFRENIER,

Plaintiff

v.

MARY ANNE KINIREY, DANIEL
MORRISON, The CHIEF OF POLICE "John
Doe" and the TOWN OF TOWNSEND,

Defendants

PROPOSED DEFENDANT WILLIAM E.
MAY'S OPPOSITION TO PLAINTIFF'S
MOTION TO AMEND COMPLAINT

Now comes the proposed defendant, William E. May ("May"), and hereby opposes plaintiff's Motion to Amend Complaint to add him as a defendant in this matter. As grounds therefor, May states that plaintiff's motion does not comply with the requirements for amending a pleading to add a party, as set forth in Local Rule 15.1. Specifically, plaintiff proposes to add May as a defendant long after the time plaintiff could reasonably have been expected to become aware of May's identity. See Local Rule 15.1(A). Further, plaintiff failed to serve the Motion to Amend upon May at least 10 days in advance of filing said motion. See Local Rule 15.1(B).

As further grounds therefor, May relies on the within Memorandum of Reasons.

MEMORANDUM OF REASONS

1. This action arises out of plaintiff's arrest by officers of the Townsend Police Department on June 15, 2002.
2. At the time of plaintiff's arrest, May was the Townsend Chief of Police.
3. On June 14, 2004, plaintiff filed the Original Complaint in this action, asserting claims against Townsend police officers Mary Ann Kinirey and Daniel Morrison, the Town of Townsend, and "the Chief of Police, John Doe."

4. Plaintiff could have easily obtained the identity of the Townsend Chief of Police prior to filing the Original Complaint, by calling the Townsend Police Department or the Townsend Town Hall, and inquiring as to the identity of the Town's Chief of Police in June, 2002.
5. Moreover, an article about the plaintiff's lawsuit, which appeared on the front page of the October 14, 2004 edition of a local newspaper identifies May as the Chief of Police at the time of plaintiff's arrest. Exhibit A.
6. However, plaintiff did not seek to add May as a defendant in this action until March 21, 2005. May submits that, given the ease with which plaintiff could have identified him as the Townsend Chief of Police at the time of plaintiff's arrest, the Motion to Amend violates Local Rule 15.1(A), requiring that "[a]mendments adding parties shall be sought as soon as an attorney reasonably can be expected to have become aware of the identity of the proposed new party."
7. Moreover, plaintiff did not serve the Motion to Amend upon May prior to filing said motion, in violation of Local 15.1(B), providing that a motion to amend to add a new party shall be served upon the proposed new party at least 10 days in advance of filing.¹
8. Therefore, May submits that the Motion to Amend Complaint to add him as a defendant should be denied for failure to comply with the rules of this Court.

¹ Defendants note that the Scheduling Order issued by this Court sets forth April 30, 2005 as the deadline for amending pleadings; however, the docket in this matter sets forth March 21, 2005 as the deadline for amending pleadings. Exhibit B. If the latter date is operative, plaintiff would be unable to comply with the Scheduling Order if he were to re-serve and re-file the Motion to Amend in accordance with Local Rule 15.1(B).

WHEREFORE, the proposed defendant, William E. May, requests that this Honorable Court deny plaintiff's Motion to Amend Complaint.

PROPOSED DEFENDANT

WILLIAM E. MAY,

By his attorney,

/s/Joseph L. Tehan, Jr.

Joseph L. Tehan, Jr. (BBO # 494020)

Gregg J. Corbo (BBO# 641459)

Kopelman and Paige, P.C.

31 St. James Avenue

Boston, MA 02116

(617) 556-0007

247016/METG/0594

director of the Spanish American Center. "I have known Rafael for many

Please see **RESIDENT / A5**

Man claims police abuse in lawsuit

By Matt O'Brien
mobrien@sentinelandenterprise.com

TOWNSEND — A Fitchburg man has filed suit against the town, saying Townsend police arrested him, beat him up, and charged him with drunk-driving because someone thought he looked ill.

Timothy L. LaFrenier of Fitchburg was driving along Route 13 from his workplace in Nashua, N.H., to a doctor's appointment when police pulled him over in June 2001, according to the suit he filed in U.S. District Court in Worcester.

Please see **LAWSUIT / A5**

Aubuchon Hardware president Marcus Moran Jr. and architect Alan Joslin on Wednesday.

Riverfront Park

By Evan Lehmann
elehmann@sentinelandenterprise.com

FITCHBURG — Calling Riverfront Park "a beautiful reality," Fred Healey and other members of the Riverfront Park Foundation unveiled the second phase of an ambitious three-year drive to raise \$1.5 million for the park's continuing evolution.

"This campaign is a journey through stages that we're only on our first leg of," Healey, chairman of the foundation's capital campaign, told a crowd numbering about 50 people at the Fay Club on Main Street, Wednesday morning.

Healey is president/CEO of Workers' Credit Union in Fitchburg.

The non-profit foundation aims to offset the public pricetag of the 1.6-acre central park, which is expected to cost a total of \$3.5 million.

As part of the year will

We are in image of Fitchburg man cities by

Marcus Moran president,

Saying roads" of Jr. describes symbol of forge its coming wit

Bush, Kerry trade

President says challenger's health care plan an "empty promise" that will cost \$5 trillion

By Mary Dalrymple
The Associated Press

TEMPE, Ariz. — Sen. John Kerry said Wednesday that 5 million people have lost their health care in the last four years and accused President Bush of "turning his back on the wellness of America." The Republican incumbent responded that his rival's plan to expand coverage was an "empty promise" that would cost taxpayers \$5 trillion.

"It's called bait-and-

switch," Bush said of his proposal to offer coverage to millions of Americans who lack it.

The exchange came moments into the final debate of a race for the House that has grown closer in recent days, and the last time Bush and his rival will face off is Election Day on Nov. 7.

Kerry and the president also clashed over jobs and the war in Iraq.

Please see **DEBATE /**

Sentinel & Enterprise
Candidate Debates
State Rep
• State Rep. James Eddridge, TJ Dyer face off at 6 p.m. Oct. 18 at Lunenburg High School
State Senate
• State Sen. Robert Antonioni, David Schneider, Richard Zlota face off at 6:30 p.m. Oct. 26 at Fitchburg State College, Percival Hall



Switch to Enterprise
Fitchburg: 978-34

FROM PAGE ONE

Athol man killed in Tuesday's four-vehicle crash was former Leominster resident

RESIDENT. / From Page A1
years. He worked with us at the agency. He was a good friend of the agency."

Latimer said Garcia was a

hard worker, and he was

employed at Sportman's Plus

in Leominster for several

years.

Garcia, 49, originally from

Puerto Rico, lived with his

grandmother in Athol.

"He had no children, but he

was part of a big family," she

said. "(Garcia) will be very

missed."

Garcia was also married.

Garcia was driving a station

wagon when it hit an 18-wheel

tractor trailer, causing the car

to fly off the road and break

through a chain-linked fence.

He was life-flighted to

UMass Memorial Medical Cen-

ter, where he later died.

Miguel Toledo, who was a passenger in the station wagon, continues to fight for his life at UMass.

Toledo, 54, was also life-flighted to UMass on Tuesday, and he was downgraded to serious condition on Wednesday.

"He's a good man," she said.

"We're praying."

Gardner police and state

police are still investigating the

cause of the accident,

which injured 11 other people.

"At this point, everything is

still up in the air," said Gard-

ner Police Officer Roger Comi-

er. "It's terms of speed, that's

being investigated by the State

Police reconstruction team."

The tractor trailer slipped onto its left side, "piling its load of sand and gravel onto the road in front of the Gardner Highway Department, and crushing the driver's side of an oncoming Montachusett Area Regional Transit Authority bus.

Police say the truck was traveling east on Route 2A, when it collided with a black Chevrolet Celebrity station wagon that entered the intersection from Manca Drive.

After the initial collision, the

truck veered into a westbound MART bus.

The truck spilled more than 8000 gallons of sand onto

Route 2A and about 30 gallons

of diesel fuel.

W.J. Graves Construction,

the Templeton company that

owns the truck, hired a private

company to clean up the spill, said Ed Collette, spokesman for the state Department of Envi-ronmental Protection.

"Once they uprooted the truck, they pumped out the tanks to prevent further spillage," Collette said.

Collette said the DEP found

no impact on any catch basins

along the road, but was unsure

whether the large amount of

sand was harmful.

"The fact that there was so

much sand there, it may have

protected the basins," he said.

It was all contained on the

pavement and the sand."

The station wagon broke

through a fence and hit a

parked van occupied by two

inmates, who were partici-

pating in community service

cleanup with several others

10-year-old girl, Cormier said. Tunes and his daughter were both in stable condition at Haywood Hospital on Wednesday. The 9-year-old boy was released from the hospital.

Four elderly Gardner residents were passengers on the MART bus at the time of the accident, including Zenobia G. Lant, 89, Frank Czapinski, 88,

no alcohol in the plaintiff's car.

The suit asks for compensa-

tory and punitive damages,

but does not specify an amount.

Town Administrator Greg

Barans said the town received

the lawsuit Tuesday.

He said he would refer the suit

to the town's insurer and lawyers.

LaPrenier has sued the two

police officers who responded to

the report, Mary Ann Kinney.

He said he would refer the suit

to the town's insurer and lawyers.

No one has made a formal

response to the complaint in federal court.

The suit follows a complaint LaPrenier lodged against the town in Oct. 2002. The town responded to that complaint by saying the police department and police officers acted properly in the incident, according to the suit.

The suit states "Kinney and

Morrison did not smell alcohol

on the breath of the plaintiff or

about the plaintiff. There was no alcohol in the plaintiff's car.

LaPrenier, injured him in the jaw and wrist.

Police charged him with

operating under the influence

of alcohol, two counts of assault

and battery on police officers,

being a disorderly person, and

restraining arrest, but he was

acquitted of all charges after a

March 2002 trial in Ayer Dis-

trict Court.

The suit states that the state police mu-

arrest without probable cause

and excessive force, denies

medical treatment at the a

and lodged charges against

they knew to be false.

★ THURSDAY, OCTOBER 14

FRIDAY & SATURDAY, SHOP BOTH DAYS 8AM-11PM

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**United States District Court
District of Massachusetts (Worcester)
CIVIL DOCKET FOR CASE #: 4:04-cv-40114-FDS**

LaFrenier v. Kinirey et al
Assigned to: Judge F. Dennis Saylor, IV
Cause: 42:1983 Civil Rights Act

Date Filed: 06/14/2004
Jury Demand: Defendant
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
06/14/2004	1	COMPLAINT Filing fee: \$ 150, receipt number 404347, filed by Timothy L. LaFrenier.(Shattuck, Deborah) (Entered: 06/14/2004)
06/14/2004		Summons, LR 4.1, Waiver, MCF Issued as to Mary Anne Kinirey, William E. May, Daniel Morrison, Townsend, Town of. (Shattuck, Deborah) (Entered: 06/14/2004)
06/18/2004	2	Notice of Reassignment. Case reassigned from Judge Gorton to Judge F. Dennis Saylor, IV upon appointment to the bench. Notice sent to counsel. (Shattuck, Deborah) (Entered: 06/21/2004)
10/29/2004	3	ASSENTED TO MOTION for Extension of Time to November 26, 2004 to File Answer re 1 Complaint by Mary Anne Kinirey, Daniel Morrison, Townsend, Town of, c/s.(Hassett, Kathy) (Entered: 10/29/2004)
10/29/2004	4	CERTIFICATE OF CONSULTATION by Joseph L. Tehan Jr. on behalf of Mary Anne Kinirey, Daniel Morrison, Townsend, Town of, c/s. (Hassett, Kathy) (Entered: 10/29/2004)
10/29/2004		Judge F. Dennis Saylor IV: Electronic ORDER entered granting 3 Motion for Extension of Time to Answer for Mary Anne Kinirey, Daniel Morrison, and Townsend, Town of. (cc/cl) (Castles, Martin) (Entered: 10/29/2004)
12/01/2004	5	ANSWER to Complaint with Jury Demand by Mary Anne Kinirey, Daniel Morrison, Townsend, Town of, c/s.(Hassett, Kathy) (Entered: 12/01/2004)
12/01/2004	6	CERTIFICATION pursuant to Local Rule 16.1 by Mary Anne Kinirey, c/s.(Hassett, Kathy) (Entered: 12/01/2004)
12/01/2004	7	CERTIFICATION pursuant to Local Rule 16.1 by Daniel Morrison, c/s. (Hassett, Kathy) (Entered: 12/01/2004)
12/01/2004	8	CERTIFICATION pursuant to Local Rule 16.1 by Townsend, Town of, c/s.(Hassett, Kathy) (Entered: 12/01/2004)
01/28/2005	9	NOTICE of Scheduling Conference Scheduling Conference set for 2/25/2005 11:00 AM in Courtroom 2 before Judge F. Dennis Saylor IV. (Castles, Martin) (Entered: 01/28/2005)

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02/08/2005		NOTICE OF RESCHEDULING: Reset Hearings: Scheduling Conference reset for 3/7/2005 11:00AM in Courtroom 2 before Judge F. Dennis Saylor IV. (Castles, Martin) (Entered: 02/08/2005)
02/28/2005	<u>10</u>	JOINT STATEMENT of counsel <i>re: Scheduling - Local Rule 16.1(D)</i> . (Corbo, Gregg) Additional attachment(s) added on 3/3/2005 (Hassett, Kathy). (Entered: 02/28/2005)
03/04/2005	<u>11</u>	NOTICE of Appearance by Sean J. Gallagher on behalf of Timothy L. LaFrenier (Hassett, Kathy) (Entered: 03/04/2005)
03/07/2005		Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor IV: Scheduling Conference held on 3/7/2005. Case called, Counsel (Gallagher/Teahan) appear for scheduling order, Scheduling order to issue (Court Reporter Kusa-Ryll.) (Castles, Martin) (Entered: 03/07/2005)
03/08/2005	<u>12</u>	Judge F. Dennis Saylor IV: Electronic ORDER entered. SCHEDULING ORDER: Final Pretrial Conference set for 3/27/2006 03:00 PM in Courtroom 2 before Judge F. Dennis Saylor IV. Status Conference set for 10/20/2005 03:15 PM in Courtroom 2 before Judge F. Dennis Saylor IV. Amended Pleadings due by 3/21/2005. Discovery due by 10/14/2005. Joinder of Parties due by 3/21/2005. Motions due by 2/3/2006.(Castles, Martin) (Entered: 03/08/2005)
03/21/2005	<u>13</u>	MOTION to Amend 1 Complaint by Timothy L. LaFrenier, c/s. (Attachments: # 1 Amended Complaint)(Hassett, Kathy) (Entered: 03/21/2005)

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